

IT 95-41  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

```
-----  
STATE OF ILLINOIS      )  
DEPARTMENT OF REVENUE )   Case No.  
                        )   SS#  
          v.           )  
                        )   Administrative Law Judge  
XXXXXX                )   Mary Gilhooly Japlon  
-----
```

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX and XXXXX (hereinafter referred to as "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on October 22, 1992. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the ("Department") determination that they had failed to file an Illinois income tax return for the year ending December 31, '987 (hereinafter referred to as the "tax year"). The Notice proposed the assessment of tax, as well as various statutory penalties and interest for income earned for the tax year at issue. XXXXX appeared at the hearing and offered testimony on behalf of the taxpayers.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Tax Deficiency issued to the taxpayers on October 22, 1992. (Dept. Ex. No. 1).

2. The basis of the Notice was that the taxpayers failed to file an Illinois income tax return for the year ending December 31, 1987. (Dept. Ex. No. 1).

3. The Notice showed a tax and penalty amount of \$739.00. (Dept. Ex.

No. 1).

4. Penalties were assessed for failure to timely file an income tax return for the taxable year at issue as statutorily required, failure to pay the income tax liability by the due date of the return and failure to make the required estimated payments. (Dept. Ex. No. 1).

5. The taxpayers timely protested the Notice. (Dept. Group Ex. No. 3).

6. Contrary to the assertions of the taxpayers, there is not evidence of a 1987 IL-1040 having been filed, nor evidence of three payments of tax, totaling the amount of \$253.00 (the amount of tax liability per the copy of the taxpayers' 1987 IL-1040 made part of the protest). (Dept. Ex. Nos. 2,8).

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides in pertinent part:

904 Deficiencies and Overpayments.

\*\*\*

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. 35 ILCS 5/904(b).

At the hearing and in the documents provided during the course of these administrative proceedings, the taxpayers asserted that the 1987 return was filed, and that three payments had been made to satisfy the tax liability as set forth on the return. However, the Department has no record of a return being filed for the tax year, nor any record of three payments totaling \$253.00. Moreover, despite requests from the Department, the taxpayer has been unable to provide cancelled checks proving such payments. As the taxpayers have not been able to rebut the Department's

prima facie case with documentary evidence, the figures set forth on the Notice of Deficiency are deemed prima facie true and correct.

The Illinois Income Tax Act, 35 ILCS 5/101 et seq., also provides that penalties be imposed for late filing of any income tax return, failure to pay the entire tax liability by the date of the return and failure to make the required estimated payments. (35 ILCS 5/1001, 1005 and 804). The record evidences no basis for the abatement of penalties based upon reasonable cause.

Thus, based upon the evidence of record, it is my recommendation that the Notice of Deficiency issued in this cause be finalized as issued.

Administrative Law Judge